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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CORVETTE ROBINSON,

Defendant and Appellant.

B217979

(Los Angeles County
Super. Ct. No. YA073764)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Steven R. Vansicklen, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Corvette Robinson appeals from the judgment entered following a jury trial which resulted in his conviction of the transportation of cocaine base (Health & Saf. Code, § 11352, subd. (a)) and possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)) and his admissions that he previously had been convicted of four drug-related offenses (Health & Saf. Code, § 11370.2, subd. (a)) and had served five prison terms within the meaning of Penal Code section 667.5, subdivision (b). The trial court sentenced Robinson to 17 years in prison. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

a. The prosecution's case.

At approximately 11:37 p.m. on December 11, 2008, Los Angeles County Deputy Sheriff Michael Maxwell and his partner, Deputy Lamb, were on patrol in a marked car. Deputy Lamb was driving and Maxwell was in the passenger seat as the deputies headed south on Hawthorne Boulevard toward the intersection at Century Boulevard in the City of Lennox. As they proceeded down the street, Maxwell saw a silver Cadillac being driven at a “high rate of speed.” The deputies “paced” the Cadillac for approximately eight blocks and determined that it was traveling at approximately 60 miles per hour in a posted 35-mile-per-hour zone. The deputies turned on their overhead lights and the Cadillac immediately pulled to the side of the road.

The deputies illuminated the interior of the Cadillac with their spotlights and saw two people in the car. Robinson was in the driver's seat and an individual was sitting in the front passenger seat. Maxwell then saw Robinson manipulating something on the ceiling, toward the front of the car.

Maxwell and Lamb got out of their patrol car and approached the Cadillac. Lamb approached the driver's side of the vehicle. Maxwell, who was on the passenger side of the car, observed Robinson use his right hand to “manipulat[e] what appeared to be the [front] dome light of the vehicle near the headrest [and] front windshield” The passenger in the car remained seated.

Lamb asked Robinson if he had a driver's license and Robinson stated that he did not. After Lamb and Robinson had a short conversation, Robinson indicated that the deputies could search the car. In particular, the deputies were looking for narcotics. Robinson and the passenger were detained and seated in the back of the patrol car. When the deputies then searched the Cadillac, Maxwell immediately looked at the "interior dome light housing that [he had seen Robinson] fidgeting with as [he, Maxwell,] approached the vehicle." The left portion of the light was ajar and Maxwell removed the entire housing. Tucked in behind the plastic housing, Maxwell found a clear sandwich baggie containing three large off-white, rock-like objects resembling rock cocaine. Maxwell booked the rocks into evidence, then continued to search the Cadillac. In the back seat he found an open box of clear, plastic sandwich baggies, similar to the bag in which the cocaine was packaged. Along with the baggies, Maxwell found a one-sided razor blade with off-white residue on it.

A search of Robinson revealed no drugs or drug paraphernalia. Further, it did not appear that Robinson was under the influence of any controlled substance. Robinson did not show any of the tell-tale signs of one under the influence of narcotics. He was not sweating profusely, he was not fidgety, his pupils were not dilated and he was not speaking more rapidly than normal. He appeared to understand everything that was said to him and he responded appropriately. In addition, he was found to have in his possession \$125 in variously sized bills.

After the deputies finished their investigation, Robinson was placed under arrest, transported to the Lennox Police Station and booked.¹

Los Angeles County Deputy Sheriff David Lassiter is an expert in the field of the sale of cocaine. He has been a deputy sheriff for the last 22 years and for the past eight years has been a detective with the narcotics special unit. His duties involve, among others, "processing the dope in the station that gets booked as evidence every 24 hours," reading reports involving individuals arrested for narcotics violations, assisting the

¹ The passenger in the Cadillac was identified, then released.

district attorney in the preparation of cases involving narcotics violations, directing the surveillance of individuals suspected of narcotics offenses and writing search warrants. He has qualified as an expert in the field of possession for the sale of rock cocaine. Based on the facts of the present case, Lassiter was of the opinion that Robinson possessed cocaine for the purpose of sale. Based on his background, training and experience, Lassiter indicated that .02 grams of rock cocaine constitutes a usable amount.

It was stipulated that senior criminalist, Tammy Klein, received an evidence envelope in Robinson's case. She examined the contents of the envelope and concluded that it contained approximately 2.70 grams of a solid substance containing cocaine base. It was also stipulated that Robinson "knows what cocaine base is." It was not stipulated that he possessed cocaine base, or that cocaine base was in the car. It was "simply [stipulated] that he knows what cocaine base is."

b. *Defense evidence.*

Robinson testified that between 10:30 and 11:00 p.m. on December 11, 2008, he had been driving on Century Boulevard. He got into the left-hand-turn lane behind two other cars, then turned south onto Hawthorne Boulevard. After he had driven to 103rd or 104th Street, Robinson was stopped by Deputies Maxwell and Lamb. Robinson had not been speeding at that time. There was a car in front of him traveling at approximately 30 miles per hour, so Robinson was driving at approximately that speed.

The passenger in Robinson's car was an individual that he did not know, but who had helped him put a Christmas tree in the trunk. When the individual then asked Robinson if he could drop him off at the metrolink station, Robinson agreed, believing that by giving the man a ride he could repay him for his help with the tree.

When the deputies flashed their lights at Robinson, he pulled into the parking lot of a well-lit strip mall. He stopped the car and placed his hands on the steering wheel. Deputy Maxwell approached Robinson on the driver's side of the Cadillac and Deputy Lamb went to the passenger side of the car. Maxwell first asked Robinson where he had obtained the car and whether it belonged to him. Robinson responded by asking Maxwell why he had pulled him over because he, Robinson, had done nothing wrong. When

Maxwell then asked Robinson if he had a valid driver's license, Robinson said that he did and offered to give the deputy the number. Maxwell declined. When Robinson offered to show Maxwell his proof of registration and insurance, Maxwell again declined, then asked Robinson to step out of the Cadillac.

Robinson got out of the car and Maxwell conducted a pat-down search. The deputy then took Robinson to the patrol car and had him sit in the back seat. Next, the deputies had the passenger get out of the car. Robinson believed "they found something on him . . . [b]ecause they beat him up and one of the [deputies] said, 'I got it.' " The passenger was handcuffed and placed in the back of the patrol car with Robinson.

While both Robinson and the passenger were seated in the back of the patrol car, the deputies searched Robinson's Cadillac. Other patrol cars arrived and the deputies from those cars assisted Maxwell and Lamb as they searched Robinson's car. After about an hour, Deputy Lamb came back to the patrol car, handcuffed Robinson and drove him to the rear of the Lennox Police Station. As he parked, Lamb received a message on his "transmitter" stating, " 'No luck. Bring him back.' " After receiving the message, Lamb drove Robinson back to the lot and parked the patrol car. However, after approximately 45 minutes, Lamb got back into the patrol car and drove Robinson back to the jail. Robinson's passenger was transported to a different location in another patrol car.

At no point during the traffic stop did Robinson reach up toward the interior light. Moreover, the light was not "ajar." Robinson indicated that "everything in [his] car [was] new. . . . The car [was] immaculate with nothing wrong with it." At no point had Robinson placed anything inside the light fixture.

On March 1, 1985, Robinson suffered a felony conviction for second degree burglary in violation of Penal Code section 459. On May 10, 1990, Robinson was found guilty of Health and Safety Code section 11351, the possession or purchase for sale of a controlled substance; and on December 6, 1993, he suffered a felony conviction for Health and Safety Code section 11351.5, possession for sale of cocaine base. On June 10, 1999, Robinson was found guilty of the felony of the sale or transportation of a

controlled substance in violation of Health and Safety Code section 11352, subdivision (a).

Michael Whitmore works at Wendy's New & Used Cars. In August or September of 2008, Whitmore sold to Robinson a silver Cadillac. On December 19, 2008, Whitmore picked up the car at B&H Towing in Inglewood. Whitmore had seen the Cadillac approximately a week before he picked it up at the towing facility and it had been "in good condition." In particular, the overhead light had been in place; it was not ajar. When he picked up the car from the impound lot, the overhead light was hanging by a wire. Whitmore put the lighting fixture back in place and secured it. He could not remember whether it simply "popped up" or whether it had to be screwed in place.

John Tabares is an investigator for the public defender's office. In late 2008, Tabares was assigned to Corvette Robinson's case. As part of his investigation, Tabares went to Wendy's Auto Sales lot. While there, he took a photograph of Robinson's silver Cadillac showing that the light in the upper console was in place.

2. Procedural history.

Following a preliminary hearing, on January 14, 2009 Robinson was charged by information with the transportation of cocaine base in violation of Health and Safety Code section 11352, subdivision (a) (Count 1), and possession for sale of cocaine base in violation of Health and Safety Code section 11351.5 (Count 2). It was further alleged that Robinson had twice previously been convicted of the possession or purchase of a controlled substance for the purpose of sale in violation of Health and Safety Code section 11351, previously had been convicted of the possession of cocaine base for sale (Health & Saf. Code, § 11351.5), and previously had been convicted of the transportation of a controlled substance (Health & Saf. Code, § 11352). Finally, it was alleged that Robinson had served five prison terms within the meaning of Penal Code section 667.5.

On February 23, 2009, Robinson made a *Pitchess*² motion with regard to Deputies Maxwell and Lamb for "false reporting." Following an in-camera hearing, the trial court

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

ordered that certain personnel records regarding Deputy Maxwell be released to defense counsel by the date of the next hearing.

At proceedings held on May 14, 2009, Robinson made a motion to suppress evidence of the cocaine base found in the light fixture in the Cadillac. Following a hearing held on the matter, the trial court denied the motion.

While the jury was deliberating on the substantive offenses, Robinson waived his right to a jury trial on his prior convictions and prison terms.

On May 22, 2009, the jury sent to the trial court the following request: “Read back Maxwell testimony about evidence that was found in car/what happened to the evidence.” After the testimony was read back to the jurors, they continued their deliberations. Later that day, the foreperson indicated that the jury had reached verdicts. The jury found Robinson guilty of the transportation of a controlled substance in violation of Health and Safety Code section 11352, subdivision (a) as charged in count 1 of the information and not guilty of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5, as charged in count 2. The jury found Robinson guilty of possession of cocaine base in violation of Health and Safety Code section 11350, subdivision (a), a lesser included offense of that charged in count 2.

After waiving his right to a trial on the alleged prior convictions, Robinson admitted that he twice previously had been convicted of Health and Safety Code section 11351, admitted that he previously had been convicted of Health and Safety Code section 11351.5, admitted that he previously had been convicted of Health and Safety Code section 11352 and, for purposes of Penal Code section 667.5, admitted that he previously had been convicted of five alleged felonies. The trial court found Robinson in violation of his Proposition 36 probation and set sentencing proceedings for July 8, 2009.

At proceedings held on July 23, 2009, Robinson testified that he is a cocaine addict and has been since 1992. Although he has had periods of sobriety, when he was using cocaine Robinson would do so on the weekends. Depending on who he was with, he and his friends would “smoke[] all night [and] all day.” Robinson indicated that “[o]ne sitting could last up to two or three days.” Robinson testified that, although he had

been convicted of possession for sale, he had never sold drugs. On the night of his arrest, there were no plastic baggies in his car.

Following testimony by an expert witness and argument by the parties, the trial court indicated that it was required to determine by a preponderance of the evidence whether Robinson was transporting the cocaine for personal use or for sale. The trial court determined the cocaine was possessed for the purpose of sale. In support of that finding, the court indicated that it did not find Robinson to be a credible witness. The court addressed Robinson and stated: “It just isn’t plausible for me that all of that would happen in view of your testimony that there were multiple patrol cars around, and all of the deputies in those cars would have had to have been involved in this conspiracy to plant evidence against you and take it from this other guy, beat him up, and then let him go. The jury didn’t buy it. I don’t buy it. [¶] You also said you were not using that weekend when you testified. This was a Friday night according to the calendar. That wouldn’t be inconsistent with your story that you used on weekends, but you said you weren’t using that weekend. So why did you have this and why was it cut up into these odd amounts, three different bags? [¶] That, in my mind, is all consistent with sale.”

The trial court denied a grant of probation and, with regard to Robinson’s conviction of Health and Safety Code section 11352, subdivision (a), imposed the mid-term of four years in state prison. For his conviction of Health and Safety Code section 11350, the trial court imposed the mid-term of two years in prison, then stayed the term pursuant to Penal Code section 654. With regard to the four Health and Safety Code section 11370.2, subdivision (a) priors, the trial court imposed three consecutive years as to each finding, or a total of 12 years in prison. Finally, with regard to the five Penal Code section 667.5, subdivision (b) priors, the trial court exercised its discretion and imposed one, one year consecutive sentence and dismissed the remaining four. In total, Robinson was sentenced to 17 years in state prison.

Robinson was ordered to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a stayed \$200 parole revocation restitution fine (Pen. Code, § 1202.45), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$50 laboratory fee (Health

& Saf. Code, § 11372.5, subd. (a)) and a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)). Robinson was awarded presentence custody credit for 225 days actually served and 112 days of good time/work time, or a total of 337 days.

Robinson filed a timely notice of appeal on July 23, 2009.

This court appointed counsel to represent Robinson on appeal on November 6, 2009.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.³

By notice filed December 9, 2009, the clerk of this court advised Robinson to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On February 3, 2010, Robinson filed a brief in which he asserted four errors. Initially, he alleged he was denied due process of law and his right to a jury trial with regard to the question whether he transported the cocaine base for sale or personal use. The contention is without merit. In determining that Robinson transported the cocaine base for the purpose of sale, the court simply determined that he was not eligible for probation and treatment under Proposition 36. (See Pen. Code, § 1210 et seq.; *People v. Glasper* (2003) 113 Cal.App.4th 1104, 1113.)

Robinson next alleged he was denied due process of law in that the trial court imposed a lengthy sentence primarily by relying on his prior convictions. Again, the contention is without merit. A review of the record indicates the trial court imposed the mid-term sentence for Robinson's conviction of the transportation of cocaine base. Although the court then imposed four 3-year terms pursuant to Health and Safety Code section 11370.2, subdivision (a), it exercised its discretion and struck four of the five 1-year Penal Code section 667.5, subdivision (b) priors. The sentence imposed was proper in view of the facts presented.

³ Counsel filed in the trial court a request that Robinson's presentence custody credits be modified in view of the Legislature's revision of Penal Code section 4019.

Robinson asserts he had ineffective assistance of counsel at trial. “In assessing claims of ineffective assistance of trial counsel, we consider whether counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms and whether the defendant suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the outcome. [Citations.]” (*People v. Carter* (2003) 30 Cal.4th 1166, 1211; see *Strickland v. Washington* (1984) 466 U.S. 668, 694.) Robinson contends his counsel was ineffective in that he failed “to request [the trial] [c]ourt to strike priors pursuant to [Penal] Code [section] 1385.” However, a review of the record indicates Robinson’s trial counsel was more than competent. Counsel argued that Robinson is a long term addict and that “[t]here [was] no violence in his record.” Counsel continued: “He doesn’t have a strike prior, and I don’t believe that in the interest of justice it’s necessary for the court to impose all four of the [section] 11370.2 [subdivision (a)] priors. He’s not – he’s not a violent offender, and 17 years is an incredible amount of time for someone who essentially has a drug problem and has all convictions that are drug-related.”

Finally, Robinson contends the trial court was unaware of “its authority to strike [his] prior convictions.” The contention is without merit. In sentencing Robinson, the trial court dismissed four of five 1-year sentence enhancements. The trial court was well aware of its authority to dismiss, or “strike,” Robinson’s prior convictions.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.